



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148749

PRELIMINARY RECITALS

Pursuant to a petition filed April 16, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that Petitioner was overissued FoodShare benefits in the amount of \$2460 for the period of April 2, 2012 and December 31, 2012.

NOTE: The record was held open to give the agency an opportunity to supplement the record with State Wage information. The document has been marked as Exhibit 6 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Interpreter: Tanya Bahena

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Paul Fredrickson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On March 27, 2012, the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that he was overissued FoodShare benefits in the amount of \$2460.00 for the period of 04/02/12 and 12/31/12, because he did not report all household income. (Exhibit 3, pgs. 82-86)
3. On March 12, 2012, Petitioner submitted an on-line ACCESS application, in Spanish, for FoodShare and Healthcare benefits. In that application, Petitioner included his son, [REDACTED] (hereinafter referred to as "J"), in his household. (Exhibit 3, pgs. 126-132)
4. Petitioner's daughter-in-law completed the application on his behalf, because he does not know how to read. (Testimony of Petitioner)
5. At the time of the March 12, 2012 application, the only income reported was social security income for Petitioner - \$541.00 per month, for his wife -\$153.00 per month and for J - \$212.00 per month. (Id.)
6. On October 16, 2012, Petitioner's wife submitted an application, in Spanish, for BadgerCare+ benefits, which included a request for coverage for J. (Exhibit 3, pgs. 133-139).
7. On November 15, 2012, Petitioner completed an on-line renewal, in Spanish, for FoodShare and Healthcare benefits. Petitioner again included "J" in his household. (Exhibit 3, pgs. 145-152)
8. A worker a UMOS completed the form for Petitioner. (Testimony of Petitioner)
9. At the time of the November 15, 2012 renewal, the only income reported was social security income for Petitioner - \$641.00 per month, for his wife -\$306.00 per month and for J- \$212.00 per month. (Id.)
10. Petitioner submitted a signature page for FoodShare benefits confirming the information in his renewal. (Exhibit 3, pg. 153)
11. Petitioner received notices from the agency on April 3, 2012, July 6, 2012, September 10, 2012 December 3, 2012 and December 13, 2012, indicating that J was included in the household. (Exhibit 3, pgs. 49-79)
12. The notices for April, July and September 2012, also indicate that the agency took into account \$198.25 per month for income earned by Petitioner for property management. (Id.)
13. The notices for December 3, 2012 and December 13, 2012, do not account for [REDACTED]'s Social Security Income, but does include \$500 per month earned by Petitioner in his job as a property manager, in addition to the Social Security Income received by Petitioner and his wife. (Exhibit 3, pgs. 49-79)
14. J turned 18 in December 2011. (Exhibit 3, pg. 14)
15. J worked at La Fuente during the second and third quarter of 2012 (April through September), earning \$773.99 during the second quarter and \$2764.78 during the third quarter. (Exhibit 6) His start date, per documentation provided by the agency, was April 20, 2012. (See Exhibit 3, pg. 20)
16. J also worked intermittently at Chipotle Mexican Grill, receiving paychecks between March 2, 2012 and October 12, 2012, earning \$10.00 per hour. (Exhibit 3, pgs. 28-30)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must

then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

Did an overpayment occur?

All income from the food unit/household must be included in determining FoodShare eligibility. *FSH §4.3.1* see also *7 CFR §273.9(a)*. A food unit is defined as, “one or more persons who live in the same household and purchase and prepare food together for home consumption. This group is tested for eligibility together...” *FHS §3.3.1.1* With regard to children, only income from those 17 years and under may be excluded from food unit/household income:

4.3.2.2 Disregarded Earned Income

“Disregard” means “do not count.” When you are calculating the total amount of income a person has received, you should exempt or exclude any of the following kinds of income:

Disregard the following sources of income:

3. Earned income of any person 17 years or younger, who is a food unit member under parental control of an adult food unit member and is enrolled in an elementary, high school, technical school, or university. This includes GED classes, and home schools recognized or supervised by the state or local board of education. Disregard the income until the month following the month in which the person turns 18 years of age. These provisions apply to semester and vacation breaks provided the student plans to return to school following the break.

It is undisputed that during the time in question, J was 18 years old. Thus, his income would typically be included in Petitioner’s household income.

Petitioner asserts that J moved out of his residence in June 2012 and has not been part of his household since that time. However, Petitioner has provided no evidence - no documentation, nor any testimony from J - to prove that J moved out of the house.

The agency has met its burden to prove that “J” was part of Petitioner’s household during the time in question, because it produced the on-line applications completed on Petitioner’s behalf, confirming J as part of the household in March 2012 and again in November 2012.

Petitioner argues that the applications are not accurate and that he should not be held responsible for their content because he is illiterate and had other people fill out the FoodShare applications for him. However, Petitioner gave consent for these individuals to complete the applications for him and if he failed to be vigilant about the information they provided on his behalf, he did so at his own peril. Further, Petitioner signed a form confirming the information he provided was accurate. If he signed the form without having someone read the documentation to him, he again did so at his own peril.

It should be noted that the agency sent Petitioner five notices between April 1, 2012 and December 31, 2012, all of which indicated that J was part of the household and which indicated what income was being counted. As previously stated above, if Petitioner did not have someone read these notices to him, he did so at his own peril.

It is undisputed that J worked at La Fuente and Chipotle Mexican Grill during the time in question. The applications from March 2012 and November 2012, show that J’s income was not reported to the agency and was therefore, not included in the agency’s allotment calculations. As such, an overpayment occurred.

When did the overpayment begin?

Although all three members of Petitioner's household received Social Security Income, nowhere in the record does it indicate that this is Social Security Disability Income. As such, it is found that Petitioner's household is not comprised entirely of elderly, blind or disabled individuals and that his obligation to report changes is governed by FoodShare Wisconsin Handbook (FSH) §6.1.1.2 which states:

“All other food units are only required to report if their total monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL. As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as ‘Reduced Reporting’ requirements.”
See also 7 CFR 273.12.

Thus, Petitioner only needed to report J's income by the 10th of the month, following the month Petitioner's income exceeded 130% of FPL. Effective October 1, 2012, 30% of FPL for an assistance group of 3 was \$2,069; prior to October 1, 2012, it was \$2008. FSH §8.1.1.1

J began working at Chipotle Mexican grill on February 17, 2012, but did not receive his first pay check until March 2, 2012. As such, Petitioner's household income did not actually change until March 2012.

According to Exhibit 3, pg. 28, J received three bi-weekly pay checks in March 2012, in the amounts of \$593.37, \$645.84 and \$242.55. Thus, J's earnings in March 2012 were:

\$593.37
+\$645.84
+\$242.55

\$1481.76

Thus, Petitioner's actual household income for March 2012 was as follows:

\$198.25 property management
\$541.00 Petitioner's Social Security
\$153.00 Wife's Social Security
\$212.00 ■■■■■'s Social Security
\$1481.76 ■■■■■'s Income from Chipotle Mexican Grill

\$2586.01 March income.

Petitioner's household income of \$2586.01 for March 2012, exceeds the \$2008/130% FPL limit. As such, Petitioner was required to report ■■■■■'s income by the tenth of April 2012, which would have affected Petitioner's benefits for May 2012. Thus, the agency incorrectly calculated the overpayment period. It should run from May 2012 through December 2012, not April 2012.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was overissued FoodShare benefits.
2. The agency incorrectly determined the overpayment period. The correct overpayment period is May 1, 2012 through December 31, 2012.

THEREFORE, it is

ORDERED

That the agency recalculate the overpayment amount, taking into consideration the correct overpayment period of May 1, 2012 through December 31, 2012. The agency shall also issue an Amended Notification of FoodShare Overissuance, reflecting the corrected overpayment amount and the corrected overpayment period. The agency shall take all administrative steps necessary to accomplish these tasks within ten days of this decision.

In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

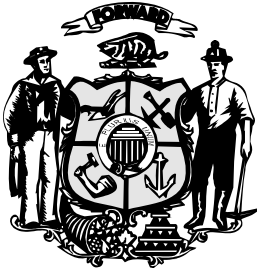
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of May, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 14, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability